IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2993 of 2002
with
CIVIL APPLICATION NO.4544 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NATHABHAI MAVJIBHAI MER

Versus

SHREE GOPALNAGAR CO.OP HOSG. SOCIETY LTD

Appearance:

1. Special Civil Application No. 2993 of 2002
MR PS CHAMPANERI for Petitioner No. 1
RULE SERVED BY DS for Respondent No. 1-2,5
RULE UNSERVED for Respondent No. 3
RULE SERVED for Respondent No. 4
UNSERVED-EXPIRED (N) for Respondent No. 6

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 14/08/2002

ORAL JUDGEMENT

With the consent of learned counsel for the petitioner at the time of hearing the matter for confirmation of interim relief the matter is taken up for final hearing.

2. Heard Mr.Chapaneri for the petitioner. The contention raised by Mr.Chapaneri is that the Lavad Suit No.161/96 was filed by Gopalanagar Coop.Housing Society Ltd (hereinafter referred to as the "society") through its President-Shri Karansinh Kishorsinh Jadeja. Mr.Chapaneri submitted that the petitioner herein was the plaintiff No.3 in the said suit. The suit was tried by the learned Nominee and it has been decreed or rather the award is passed in favour of the society. Once the suit is decreed in favour of plaintiff, the original defendant No.1 on behalf of the Society who was plaintiff could not have preferred Appeal No.362/97 before the Gujarat State Coop.Tribunal. Mr.Chapaneri submitted that therefore with a view to see that the appeal can not be entertained by the tribunal, an application-Exh.60 was submitted and Mr.Chapaneri submitted that the learned Tribunal without considering the said aspect that the original plaintiff in whose favour the award was passed could not prefer appeal against the judgment of the Nominee, the application is rejected and hence this petition.

3. Having considered the submissions made by Mr.Chapaneri and the perusal of the application-Exh.60 shows that initially the Lavad Suit No.161/96 came to be filed by Karansinh Kishorsinh Jadeja claiming himself to be the President of the Society and the Nominee found that the original defendants had no authority to represent the society. However, the defence of the original defendants was that they have been duly elected and therefore representing the society appeal came to be filed.

4. A perusal of the order passed by the tribunal dated 14.2.2002 shows that at para 4 of the order the tribunal has observed as under:

> "However, whether the defendants are office bearers or not was a controversy in the suit and the same controversy is continued in appeal and therefore the rights of the parties are subject to the decision of the appeal and the rights are not prejudiced by mere title of the appeal.Defendant Nos 1 & 2 are joined in the individual capacity in the suit they have preferred appeal in the capacity of the office bearers if they represent the society but the question is yet to be decided in the appeal.

> Therefore, at this stage, it can not be conclusively decided that the defendants of the suit have no right to represent the society and the same can be decided only after full-fledged hearing of the appeal and decision in appeal."

5. In view of the aforesaid reasons recorded by the tribunal, when the tribunal has primafacie found that the grievance raised by the petitioner can only be decided at the time when the appeal is finally heard, I am of the view that no error is committed by the tribunal in exercising the jurisdiction, more particularly, because the observations of the tribunal are to the effect that final decision shall be taken only in the appeal at the time when the appeal is decided. Therefore, it can not be said that any prejudice is caused to the petitioner on account of the order passed by the tribunal and the petitioner will have liberty to raise the contentions available under law at the time when the appeal is finally heard.

6. In the above view of the matter, I find that the order dated 14.2.2002 passed by the tribunal which is under challenge in this petition does not call for interference and hence this petition is rejected. Rule is discharged. Ad interim relief is vacated. There shall be no order as to costs.

7. In view of the order passed in main Spl.C.A.No.2993/02 no order on Civil Application No.4544/02. Rule is discharged.

14.8.02 (JAYANT PATEL,J)